IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

Writ Appeal No.2605 of 2002
and
Criminal Revision Case No.1142 of 2002

M.Krishnamoorthy,
S/o.Manakhi ... Appellant in W.A.and
Petitioner in Crl.RC.
-Vs-

1) P.M.Neelamegham,
S/o.Malayappa Achari ... 1st respondent in W.A
and Crl.R.C.

2) The District Collector,
Trichirapalli District,
Trichirapalli. ... 2nd respondent in W.A

3) The Revenue Divisional Officer
cum Sub Divisional Magistrate,
Trichirapalli. ... 3rd respondent in W.A
and 2nd respondent
in Crl.R.C.

4) The Tahsildar,
Trichy Town, Trichy Taluk,
Trichirapallai. ... 4th respondent in W.A

Writ Appeal No.2605 of 2002: Writ Appeal under Clause 15 of
Letters Patent against the order of the learned Single Judge in W.P.No.2200 8
of 2002, dated 21.06.2002.

Crl.R.C.No.1142 of 2002: Revision under Section 397 read with
Section 401 of Criminal Procedure Code against the order of SubDivisional
Magistrate, Trichy, dated 9.5.2002, in Na.Ka.No.A-1/2190/2002.

!For Appellant in W.A.
Petition in Crl.R.C. .. Mr.K.Perumal for
Mr.G.R.Edmund

^For 1st respondent in
both W.A. & Crl.R.C. .. Mr.AR.L.Sundaresan

For Respondent Nos.
2 to 4 in W.A. And
2nd respondent in
Crl.R.C. .. Mrs.T.Kokilavani,
Govt.Advocate.

:COMMON JUDGMENT

C.NAGAPPAN,J

Criminal Revision Case No.1142 of 2002 is filed against the order of the Revenue Divisional Officer cum Sub Divisional Magistrate, Trichy, dated 9.5.2002, in Na.Ka.No.A1/2190/2002.

2) Writ Appeal No.2605 of 2002 is filed against the order of the learned Single Judge inW.P.No.22008 of 2002, dated 21.06.2002.

3) Since the subject matter of both the cases relate to each other, with the consent of parties, they were heard together and a common judgment is delivered.

4) Briefly the facts are as under. The petitioner and the first respondent in the Criminal Revision Case belong to Kammala Community and Sri Kalika Parameswari alias Sri Kamatchi Amman Vahayara Devasthanam is managed by the community residing within the limits of Municipalities of Trichy and Sri Rangam as per the scheme decree, dated 28.8.1 928, in O.S.No.2 of 1927 on the file of District Judge, Tiruchirappalli. The Petitioner and the first respondent in the Revision Case were elected along with three trustees in the General Body held on 4.2.2 001. The first respondent was originally elected as Executive Trustee and while functioning as such, he is alleged to have committed various malpractices in respect of money and properties of the Temple. It is further averred that on 7.11.2001, the remaining four trustees sent a communication to him seeking for convening of the meeting of trustees. Further communication, dated 18.2.2002, was also addressed to him. On 25.2.2002, the remaining trustees convened the meeting of the trustees and on 2.3.2002, the first respondent was removed from the post of Executive Trustee and the petitioner was elected as Executive Trustee and he was functioning as such. The fact of election was informed to the Joint Commissioner, H.R. & C.E., on 7.3.2002. On 12 .4.2002, Inspector, East, HR & CE, permitted the petitioner to install a new hundiyal and he has sealed the same. The petitioner also gave a complaint to Inspector of Police, Gandhi Market Police Station, Trichy and on 1.5.2002, the petitioner sent a communication to the first respondent to handover all the temple records. General Body was convened after paper publication and the first respondent was removed from the post of Trustee as well as Secretary in the General Body and he was informed of the same by public notice, dated 29.5.2002, in Malai Murasu.

On the basis of a petition given by the first

respondent, the revision petitioner was summoned by the second respondent, namely, Revenue Divisional Officer cum Sub Divisional Magistrate, Trichy and he appeared before him on 28.3.2002 and submitted a counter with copies of documents. Though the petitioner requested for adducing oral evidence, the second respondent refused to permit the same and the second respondent passed the impugned order on 9.5.2002 and the petitioner has challenged it on various grounds.

The first respondent in the criminal revision case filed writ petition No.22008 of 2002 by contending that he is the Executive Trustee of the Devasthanam as per the General Election of the community held on 4.3.2001 for a period of three years, i.e. Upto 4.3.2004, and the fourth respondent, who is the petitioner in the revision, expelled the writ petitioner from the Executive Trusteeship by force and hence the petitioner filed a petition before the second respondent, namely, Revenue Divisional Officer cum Sub Divisional Magistrate, Trichy, on 24.3.2002 and after enquiry, an order, dated 9.5.2002, was passed directing fourth respondent to handover all the documents and materials of the Devasthanam and the Trusteeship to the petitioner. The petitioner approached the third respondent, namely, Tahsildar, to implement the order and when he directed the fourth respondent to handover charges, he refused to obey the same in writing and the third respondent gave a report. Pursuant to it, the second respondent, on 7.6.2002, passed a consequential order in Na.Ka.No.A1/2190/2002, directing the third respondent to break open the lock and door and list out the things in the presence of mahazar witnesses and handover the same to the petitioner. The petitioner approached the third respondent on several occasions, but no steps were taken to implement the order. The petitioner also made a representation to the first respondent, namely, District Collector, Trichy District, for implementing the order, but no action was taken. Hence the petitioner filed writ petition seeking for issuance of a writ of mandamus directing the respondents 1 to 3 to implement the orders, dated 9.5.2002 and 7.6.2002, passed by the second respondent and for directing the fourth respondent to handover the charges of the Devasthanam to the petitioner. The learned Single Judge heard the counsel for the writ petitioner and the Government Counsel and disposed of the writ petition by directing the fourth respondent to implement the order passed by the second respondent. Aggrieved by the same, the fourth respondent in the writ petition preferred writ Appeal No.2605 of 2002 challenging the order of the learned Single Judge and contended that though he was a party in the writ petition, without notice to him, final order has been passed.

5. The learned counsel for the appellant in writ appeal/revision petitioner contended that the Revenue Divisional Officer cum Sub Divisional Magistrate has not passed the preliminary order under subsection (1) of Section 145 of Criminal Procedure Code and the appellant in writ appeal was not informed about the nature of the proceedings and his request for adducing oral evidence was not considered and no finding was given with reference to breach of peace and there is non application of mind on the part of second respondent in passing the impugned order and the order is illegal. It is further contended by the learned counsel that in the writ petition, direction to implement the illegal order cannot be issued and the order passed by learned Single Judge has to be set aside.

6. Per contra, the learned counsel for the first respondent in the writ appeal/first respondent in the criminal revision contended that the appellant in writ appeal participated in the proceedings before the Revenue Divisional Officer cum Sub Divisional Magistrate and after hearing both sides the impugned order as well as consequential order were passed by him and there is no illegality in this regard and the direction issued in the writ petition is sustainable.

7. Section 145 of Criminal Procedure Code deals with dispute concerning land or water and the relevant sub-sections are extracted below.
"145. Procedure where dispute concerning land or water is likely to cause breach of peace.-- (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.
(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.
(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:
Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).
(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.
(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction;

and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.
(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3)."

8. Under sub-section (1) of Section 145, the Executive Magistrate has to satisfy himself that a dispute likely to cause a breach of peace in his jurisdiction exists concerning any land or water, either on a police report or upon other information and on being so satisfied, he is to make an order in writing stating the grounds of his satisfaction and requiring the parties concerned to the dispute to attend his Court on a specified date and time and put in written statements of their claims in respect of actual possession of the subject of dispute. The requirements in the above sub-section are the satisfaction of the Executive Magistrate about the existence of a dispute likely to cause breach of peace and making an order in writing stating the grounds of satisfaction and requiring the parties to attend his court on a specified date and time by putting written statements. In short, sub-section (1) contemplates the passing of order by the Executive Magistrate and as per sub-section (3), that order has to be served in the manner provided by the Code for the service of summons upon persons as directed and one copy has to be published by affixture at or near the place of the subject of dispute.

9. Under sub-section (4) of Section 145, the Executive Magistrate is required to peruse the statements put in and hear the parties and receive all evidence produced and decide asto whether any and which of the parties was in possession of the subject of dispute on the date of the order passed by him under sub-section (1). It is also provided that if it appears to him that any party has been forcibly and wrongfully dispossessed within two months next before the date on which a police report or other information was received by him or after that date and before the date of his order under sub-section (1), the Executive Magistrate may treat the party so dispossessed as if he had been in possession on the date of his order under sub-section (1).

10. Under sub-section (5) of Section 145, if the Executive Magistrate, at the end of the enquiry, comes to the conclusion that no such dispute likely to cause a breach of peace exists or has existed, he shall cancel the order passed under sub-section (1) and if it is not cancelled, that shall be final.

11. In the present case, there is no dispute with regard to the fact that the Revenue Divisional Officer cum Sub Divisional Magistrate has not passed order under sub-section (1) of Section 145 in the matter. He has only issued summons in Na.Ka.Aa.1/2190/2002, dated 27.3.20 02, requiring the parties to attend the enquiry to be held on 28.3.20 02 at 11.00 a.m. After hearing the parties, he has passed order in Na.Ka.A.1/2190/2002, dated 9.5.2002, under sub-section (1) and subsection (4) of Section 145. In other words, he exercised jurisdiction under Sections 145(1) and 145(4) at the same time and has chosen to pass the impugned order. The power of the Executive Magistrate to pass an order under sub-section (1) is at the preliminary stage

and the power to pass an order under sub-section (4) is after enquiry, namely, in the final stage. Both the orders cannot be clubbed in a single order. The very fact remains that the Revenue Divisional Officer cum Sub Divisional Magistrate has not passed preliminary order under sub-section (1) and the entire proceedings are vitiated. It is not known asto whether the Executive Magistrate was satisfied asto the existence of a dispute likely to cause a breach of the peace and the grounds on which he was so satisfied and even in the impugned order, nothing is stated in this regard. We find that there is no application of mind by the Executive Magistrate and he has not followed the mandatory provisions in Section 145 Cr.P.C. and the order passed by him in Na.Ka.A.1/2190/2002, dated 9.5.2002, is illegal.

12. The prayer in the writ petition is for issuance of writ of mandamus to implement the order of the RDO cum SDM. We have already held that the order is an illegal one and hence it cannot be implemented. The order of the learned Single Judge has to be set aside.

13. In the result, Criminal Revision Case No.1142 of 2002 is allowed and the order of the Revenue Divisional Officer cum Sub Divisional Magistrate, Trichy, dated 9.5.2002, in Na.Ka.A-1/2190/2002 is set aside and the matter is remanded back for fresh consideration and the Revenue Divisional Officer cum Sub Divisional Magistrate is directed to dispose of the same in accordance with the provisions under Section 145 Cr.P.C. The Writ Appeal No.2605 of 2002 is allowed and the order of the learned Single Judge, dated 21.06.2002 is set aside and the writ petition is dismissed. There shall be no order as to costs. Connected Crl.M.P.No.5685 of 2002 are closed.

Index:Yes
Internet:Yes
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To:

1) The District Collector,
Trichirapalli District,
Trichirapalli.

2) The Revenue Divisional Officer
cum Sub Divisional Magistrate,
Trichirapalli.

3) The Tahsildar,
Trichy Town, Trichy Taluk,
Trichirapallai.

4) The Public Prosecutor,
High Court, Chernnai-104.

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